33 (1) **S.B. CIVIL MISC. APPEAL NO.1451/2006.**
(Chet Ram Vs. Dal Chand & Ors.)
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34 (2) **S.B. CIVIL MISC. APPEAL NO.601/2007.**
(Babu Lal Vs. Dal Chand & Ors.)
..

Date of Order :: 14th February 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. S.K. Sankhla, for the appellants.
Mr. Daulat Singh Nimbla]
Mr. Sharad Aggarwal], for the respondents.
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These two appeals, CMA Nos.1451/2006 and 601/2007, preferred by the claimants against the common award dated 28.03.2006 made by the Motor Accidents Claims Tribunal, Phalodi in Claim Case Nos. 59/2005 and 28/2005 have been heard together for the common questions involved; and are taken up for disposal by this common order.

The claimant-appellants moved separate claim applications against the driver, owner and insurer of a truck bearing registration No. RJ19 1G 5036 seeking compensation for the loss suffered by them due to the injuries sustained in a vehicular accident involving the said truck that occurred on 24.01.2004 on Phalodi-Lordiya road. The two claim applications were consolidated on 17.09.2005; on the pleadings of the parties, consolidated issues were framed by the Tribunal on 27.01.2006; and the matter was posted for evidence of the claimants on 23.02.2006.

On 23.02.2006, the witnesses Babu Lal and Chet Ram, i.e. both the claimants, were present before the Tribunal but the counsel abstained from work and, therefore, the matter was adjourned and placed the next day, i.e. 24.02.2006. The order-sheet dated 23.02.2006 reads thus:

> "वकुलाय पक्षकारान अनुपस्थित
>
> गवाह बाबूलाल, चेतराम उपस्थित । अधिवक्तागण द्वारा अधिवक्ता संघ, सीकर के समर्थन में आज सामूहिक रूप न्यायालय में उपस्थिति नहीं दिये जाने के कारण पत्रावली वास्ते साक्ष्य प्रार्थी दिनांक 24/2/2006 को पेश हो । "

On 24.02.2006, the counsel for the non-applicant insurer filed certain documents and of course an adjournment was sought on behalf of the claimants and the matter was placed for evidence on 22.03.2006.

On 22.03.2006, an adjournment was again sought on behalf of the claimants and the Tribunal observed that opportunities had been granted in the past and, therefore, last opportunity was being granted; and placed the matter on 28.03.2006 with the stipulation that upon the claimants' producing all the witnesses their statements shall be recorded and else, the evidence would be treated closed.

On 28.03.2006 at 2.45 p.m. the Tribunal observed that the claimants' witnesses were not present and there was no justification to grant any further time and hence

proceeded to close their evidence. For there being no evidence of the claimants, the non-applicants closed their evidence; and the Tribunal proceeded to reject the claim applications for want of evidence.

Aggrieved, the claimants-appellants have preferred these appeals contending that they have been denied reasonable opportunity of leading evidence and proving their case; and the Tribunal was not justified in closing their evidence and deciding the matter in hot-haste. Called upon to answer, learned counsel appearing for the respondents found it difficult to support the award impugned and very fairly conceded that they cannot justify the approach of the Tribunal in hastily closing the evidence and rejecting the claim applications.

Upon examination of the entire record, it is rather painful for this Court to notice that the Tribunal concerned, dealing with the claims for compensation made by the vehicular accident victims, has chosen to adopt such a procedure of simply rushing through the matter, shutting off the evidence of the claimants and rejecting the claim applications then and there, without even a peep into the record. Learned counsel for the respondents have very rightly conceded that the approach of the Tribunal in this case cannot be justified.

In relation to the incident dated 24.01.2004, these claim applications were filed on 28.03.2005 (Case No.28/2005) and on 12.09.2005 (Case No.59/2005); and after filing of the reply by the non-applicants, consolidated issues were framed on 27.01.2006. Then, on the very first date fixed for evidence, i.e. 23.02.2006, both the claimants presented themselves before the Tribunal but the Tribunal adjourned the matter for the association of the counsel choosing to abstain from work. Obviously, the claimants were keen to prosecute their claim applications and, therefore, presented themselves for evidence on the very first date fixed for the purpose. However, the Tribunal did not take their evidence for the counsel being absent and then fixed the matter very next day. If the counsel choose not to take up the proceedings on the date fixed, the claimants could not have been made to suffer on that count nor the Tribunal was justified in not considering the bonafide of the claimants.

True it is that the claimants were not present on 24.02.2006 and on 22.03.2006; but there appears no justification that the Tribunal chose to put such a condition on 22.03.2006 that entire evidence be produced on the next date else the same would be treated closed and then fixed the hearing six days hence, i.e. on 28.03.2006.

It appears that the claimants were residents of Sriganganagar and Jaipur respectively; and filed their claim applications at Phalodi particularly for the reason of accident having occurred at Phalodi-Lordiya road and FIR having been lodged at Police Station Phalodi. As noticed, they presented themselves on the first day fixed for their evidence but the same was not recorded for the reasons absolutely beyond their control. It also appears from perusal of proceedings in Civil Misc. Application No 10/2006 connected with original record that on 28.03.2006 itself counsel for the claimants moved an application and pointed out that he could not inform the claimants of the date of hearing and hence prayed for time. The Tribunal proceeded to reject the application as incompetent with the observations that the claim applications were dismissed under Order 17 Rule 3 CPC and not under Order 9 CPC. Without going into tenability of this application, if moved after pronouncing of the award, this Court finds from the contents thereof that it was for the omission of information on the part of counsel about date of hearing that the claimants could not appear on 28.03.2006.

In any case, there appears absolutely no reason, emergency or urgency for which the Tribunal has exhibited such impatience and proceeded to shut down the evidence on 28.03.2006 at 2:45 p.m. and pronounced the award, of

dismissal of claim applications for want of evidence, then and there. This court is clearly of opinion that without causing any prejudice to any of the parties, a reasonable opportunity of presenting their case could have been granted to the claimants; and rather, ought to have been granted. Before closing the evidence and winding up claim applications, the Tribunal ought to have looked at the ground realities and particularly the fact that the claimants were not the residents of Phalodi and ought also to have considered that the claimants had nothing to gain by prolonging the matter nor there was any reason for which they would be avoiding to lead evidence.

The Tribunal has failed to consider that the rules of procedure are intended to serve the cause of justice and it is always preferred to decide the matters on merits rather than throwing out the parties on mere technicalities or by mere counting the number of dates. Moreover, these being the motor accident claim applications, the approach of the Tribunal, in hurriedly terminating the evidence of the claimants, who have been shown having suffered injuries in the accident, is not compatible with the requirements of substantial justice.

Consequent to the discussion aforesaid, the impugned award dated 28.03.2006 cannot be sustained and deserves to be set aside; and in the circumstances of the

case, the matter deserves to be remanded to the Tribunal for hearing on merits after affording adequate opportunity of leading evidence to all the parties concerned. It is required of the Tribunal to notice that its approach of rushing through the matter by bolting the doors of hearing, apart from denying decision on merits, has unnecessarily added to the life of litigation.

In the result, both the appeals are allowed; the impugned award dated 28.03.2006 relating to Claim Case Nos. 59/2005 and 28/2005 is set aside; the claim cases shall stand restored with the Tribunal that shall proceed with the matter after affording reasonable opportunity to the parties to lead their evidence and shall decide the claim applications after hearing all the parties in accordance with law. There shall be no order as to costs of these appeals.

Record be sent back immediately and parties shall remain present before the Tribunal on 13.03.2007.

(DINESH MAHESHWARI), J.

//Mohan//

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Mr. S.K. Sankhla, for the appellant.
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Vide order made in S.B. Civil Misc. Appeal No.601/2007 (Babu Lal Vs. Dalchand & Ors.).

(DINESH MAHESHWARI), J.

//Mohan//